

TITLE 2. ADMINISTRATION**CHAPTER 7. DEPARTMENT OF ADMINISTRATION
FINANCE DIVISION, PURCHASING OFFICE**

(Authority: A.R.S. § 41-2511 et seq.)

Chapter 7 consisting of Article 1, Sections R2-7-101 thru R2-7-104; Article 2, Sections R2-7-201 thru R2-7-203; Article 3, Sections R2-7-301 thru R2-7-334, R2-7-336 thru R2-7-370; Article 4, Sections R2-7-401 thru R2-7-405, R2-7-407 thru R2-7-411; Article 5, Sections R2-7-501, R2-7-503 thru R2-7-515; Article 7, Section R2-7-701; Article 8, Sections R2-7-801 thru R2-7-810; Article 9, Sections R2-7-901 thru R2-7-937; Article 10, Sections R2-7-1001 thru R2-7-1008 adopted effective April 3, 1985 (Supp. 85-2).

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ARTICLE 1. GENERAL PROVISIONS

R2-7-101. Written Determinations

- A. Each written determination shall specify the facts and law necessary to support the determination.
- B. The State Procurement Administrator is authorized to prescribe methods and operational procedures to be used in preparing written determinations.
- C. Each written determination shall be filed in the applicable solicitation or contract file.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-102. Definitions

In this Chapter, unless the context otherwise requires:

1. "Arizona state contract" means a contract established by the Department through which state governmental units are required to purchase and other eligible procurement units may purchase.
2. "Assistant Director for Facilities Planning and Construction" means the Assistant Director of the Department of Administration for Facilities Management.
3. "Clergy" means a minister of a religion.
4. "Days" mean calendar days and shall be computed pursuant to A.R.S. § 1-243.
5. "Dentist" means a person licensed pursuant to A.R.S. Title 32, Chapter 11.

6. "Finished goods" mean units of manufactured product awaiting sale.
7. "Legal counsel" means a person licensed as an attorney pursuant to rules of the Supreme Court, A.R.S. Volume 17A.
8. "May" denotes the permissive.
9. "Physician" means a person licensed pursuant to Title 32, Chapter 13 or 17.
10. "Purchase request" or "purchase requisition" means that document, or electronic transmission, whereby a using agency requests that a contract be entered into for a specific need and may include, but is not limited to, the description of the requested item, delivery schedule, transportation data, criteria for evaluation, suggested sources of supply, and information supplied for the making of any written determination required by the Arizona Procurement Code or this Chapter.
11. "Raw materials" mean goods, excluding equipment and machinery, purchased for use in manufacturing a product.
12. "Shall" denotes the imperative.
13. "State Procurement Administrator" means the person holding the position as the administrator of the State Procurement Office.
14. "Trade secret" means a secret, commercially valuable plan, formula, process or device that is used for making, preparing, compounding or processing trade commodities and that can be said to be a product of either innovation or substantial effort.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-103. Time and Place of Market Price

If a price at the times or places described in this Chapter is not readily available, the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-104. Confidential Information

- A. If a person believes that the person's bid, proposal, offer, specification, or protest submitted to the state contains trade secrets or other proprietary data that remain confidential under A.R.S. § 41-2533(D) or 41-2534(D), the person shall include with the submission a statement that explains and supports the person's claim that the submission contains such information. The person also shall stamp as confidential or otherwise specifically identify in the submission all trade secrets and other proprietary data that the person believes remain confidential.
- B. The information identified by the person as confidential shall not be disclosed until the Director makes a written determination.
- C. The procurement officer shall make an initial determination whether the information identified is confidential under A.R.S. § 41-2533(D) or 41-2534(D). If the procurement officer determines that the information is not confidential under A.R.S. §

41-2533(D) or 41-2534(D), the procurement officer shall refer the matter to the Director. The Director shall review the statement and information and shall determine in writing within a reasonable time whether the information is a trade secret or other proprietary data that shall remain confidential. If the Director determines that the information is a trade secret or other proprietary data that shall remain confidential, the information shall remain confidential.

- D. If the Director determines to disclose the information, the Director shall inform the person in writing of such determination.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-105. State Employee or Official Use of Contracts Prohibited

State employees and officials shall not be permitted to make purchases for personal or business use of any contract entered into by the state.

Historical Note

Adopted effective April 2, 1993 (Supp. 93-2).

ARTICLE 2. PROCUREMENT ORGANIZATION**R2-7-201. Delegation of Procurement Authority**

- A. The Director shall consider the following factors in making the decision to delegate procurement authority.
 1. The procurement expertise, specialized knowledge and past experience and performance of the state governmental unit;
 2. The impact of the delegation on procurement efficiency and effectiveness; and
 3. The abilities and resources of the Department to exercise the authority if it is not delegated.
- B. Delegation shall be in writing and shall specify:
 1. The activity or function authorized;
 2. Any limits or restrictions on the exercise of the delegated authority;
 3. Whether the authority may be further delegated; and
 4. The duration of the delegation.
- C. Authority delegated by the Director may be revoked or modified by the Director.
- D. Any state governmental unit receiving a delegation of authority shall exercise that authority according to the Arizona Procurement Code, these rules and the terms of the delegation.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-202. Delegation of Authority for Procurements Not Exceeding an Aggregate Amount of \$5,000

The State Procurement Administrator may delegate to any using agency the authority to make purchases pursuant to R2-7-336 and R2-7-337 if the purchase is estimated not to exceed an aggregate amount of \$10,000. Any delegation shall be in writing and may be limited as the State Procurement Administrator directs. Authority delegated by the State Procurement Administrator may be revoked or modified by the State Procurement Administrator.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-203. Procurement Advisory Groups

- A. A procurement advisory group member who participates in any aspect of a specific procurement as an advisory group member shall be prohibited from receiving any benefits directly or indirectly from a contract for such procurement.
- B. Specifications prepared by a procurement advisory group shall comply with Article 4 of the Arizona Procurement Code.
- C. The Director shall not delegate to a procurement advisory group, or a non-state employee member thereof, the authority for the award or administration of any particular contract, or any dispute, claim, or litigation pertaining thereto.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

ARTICLE 3. SOURCE SELECTION AND CONTRACT FORMATION**R2-7-301. Definitions**

In this Article, unless the context otherwise requires:

1. "Bid sample" means an item furnished by a bidder to show the characteristics of the item offered in the bid.
2. "Capability" means capability at the time of contract award.
3. "Clarification" means written or oral communication with a bidder or offeror, including demonstrations or questions and answers, for the sole purpose of information gathering or of eliminating minor informalities or correcting nonjudgmental mistakes in a bid or proposal. Clarification does not otherwise afford the bidder or offeror the opportunity to alter or change its bid or proposal.
4. "Cost analysis" means the evaluation of cost data.
5. "Cost data" means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements that have been actually incurred or that are expected to be incurred by the contractor in performing the contract.
6. "Cost-plus-a-percentage-of-cost contract" means a contract that, prior to completion of the work, the parties agree that the fee will be a predetermined percentage of the total cost of the work.
7. "Defective data" means data that is inaccurate, incomplete or non-current.
8. "Descriptive literature" means information available in the ordinary course of business that shows the characteristics, construction, or operation of an item offered in a bid or proposal.
9. "Discussions" means oral or written negotiations between the state and an offeror during which information is exchanged about specifications, scope of work, terms and conditions and price set forth in the initial proposal. Communication with an offeror for the sole purpose of clarifications does not constitute "discussions".
10. "Incremental award" means an award of portions of a definite quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity required.

11. "Minor informality" means mistakes, excluding judgmental errors, that have negligible effect on price, quantity, quality, delivery, or other contractual terms and the waiver or correction of which does not prejudice other bidders or offerors.
12. "Multiple award" means an award of separate contracts for an indefinite quantity for one or more similar materials or services to more than one bidder or offeror.
13. "Price analysis" means the evaluation of price data.
14. "Price data" means information concerning prices, including profit, for materials, services, or construction substantially similar to those being procured under a contract or subcontract. In this definition, "prices" refers to offered or proposed selling prices, historical selling prices, or current selling prices of the items being purchased.
15. "Regional award" means the division of a contract for one or more similar materials or services into geographic regions.
16. "Small business" means a concern defined in A.R.S. § 41-1001(14).
17. "Solicitation" means an Invitation for Bids, a Request for Technical Offers, a Request for Proposals, a Request for Quotations, or any other invitation or request by which the state invites a person to participate in a procurement.
18. "Technical offer" means unpriced written information from a prospective contractor stating the manner in which the prospective contractor intends to perform certain work and its qualifications.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Amended effective July 6, 1994 (Supp. 94-3).

R2-7-302. General Provisions

- A. A procurement officer shall neither award a contract nor incur an obligation on behalf of the state unless sufficient funds are available for the specific procurement.
- B. Any bid or proposal that is conditioned upon award to the bidder or offeror of both the particular contract being solicited and another state contract shall be deemed nonresponsive or unacceptable.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-303. Extension of Offer Acceptance Time

After opening of bids or proposals, the procurement officer may request bidders or offerors who have submitted timely bids or proposals to extend, in writing, the time during which the state may accept their bids or proposals. It is not necessary to receive a written concurrence from all bidders or offerors to award a contract. A written concurrence is required from those bidders or offerors who are to be awarded a contract and that concurrence must be received by the procurement officer before the original bid or proposal expires.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective

tive April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-304. Purchase Requests

- A. If a state governmental unit determines the need for a material or service, it shall prepare a purchase request.
- B. Upon receipt of a purchase request from a state governmental unit, a procurement officer is authorized to determine the form and manner in which the procurement shall be solicited, except as otherwise provided in this Chapter.
- C. The procurement officer shall reject the purchase request, if after consultation with the requesting state governmental unit, the procurement officer determines that it is not advantageous to the state. The determination shall state the reasons for the rejection and shall accompany the returned purchase request.
- D. Disagreements between a using agency and the State Purchasing Administrator concerning actions taken under subsection (B) or (C) of this rule, shall be brought to the Director for resolution. Disagreements between a purchasing agency and its procurement officer shall be resolved in accordance with the agency's delegation of authority.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-305. Assignment of Rights and Duties

The rights and duties of a state contract are not transferable or otherwise assignable without the written consent of the procurement officer.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-306. Change of Name

- A. If a contractor requests to change the name in which it holds a state contract, the procurement officer may, upon receipt of a document indicating name change, enter into a written amendment with the contractor to effect the name change. The amendment shall provide that no other terms and conditions of the contract are changed.
- B. All change of name amendments shall be reported to the State Procurement Administrator before the date that the amendment becomes effective.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-307. Installment Purchases

Installment purchases may be used when advantageous to the state. If an installment purchase is used, provisions for installment purchase payments shall be included in the solicitation document.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-308. Multiple-source Contracting

- A. If the procurement officer anticipates that any of the awards described in subsections (B) through (D) of this rule will be made, the solicitation shall include a notification of the right of the state to make such an award and the criteria upon which such an award will be based.
- B. An incremental award may be made only if the procurement officer determines in writing that such an award is necessary to obtain the required quantity or delivery.
- C. A multiple award shall be made only if the procurement officer determines in writing that a single award is not advantageous to the state. A multiple award shall be limited to the least number of suppliers necessary to meet the requirements of the using agencies.
- D. A regional award may be made only if material or service is required to widely scattered locations or a particular requirement is of a local nature.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-309. Purchase of Items Separately from Construction Contract

The determination whether materials shall be procured as part of or separate from construction contract shall only be made by the State Procurement Administrator and Assistant Director for Facilities Management.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-310. Contract Change Orders and Amendments

Any contract change order or amendment that exceeds \$100,000, or a contract change order or amendment of \$100,000 or less that exceeds \$10,000 or 10% of the contract amount, whichever is greater, may be executed only if the State Procurement Administrator or, in the case of construction, Assistant Director for Facilities Management determines in writing that the change order or amendment is advantageous to the state. This rule shall not apply to the extension of a contract the price of which was competed and evaluated under the contractor's original bid or proposal.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-311. Arizona State Contracts

- A. State governmental units shall use existing Arizona state contracts to satisfy their needs for those materials and services covered by such contracts.
- B. If a state governmental unit believes that a particular Arizona state contract does not satisfy its needs, the state governmental unit may not otherwise purchase the material or service without the written approval from the State Procurement Administrator. A copy of the approval shall be filed in the corresponding purchase order file maintained by the state governmental unit.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-312. Prospective Vendors Lists

- A. The State Procurement Administrator shall compile and maintain a prospective vendors list. Inclusion of the name of a person shall not indicate whether the person is responsible concerning a particular procurement or otherwise capable of successfully performing a state contract.
- B. Persons desiring to be included on the prospective vendors list shall notify the State Procurement Administrator. Upon notification, the State Procurement Administrator shall mail or otherwise provide the person with a vendor registration form. The person shall complete the vendor registration form and return it to the State Procurement Office. Within five days after receiving the vendor registration form, the State Procurement Administrator shall add the person to the prospective vendors list unless the State Procurement Administrator makes a written determination that inclusion is not advantageous to the state.
- C. Persons that fail to respond to solicitations for two consecutive procurements of similar items may be removed from the applicable vendors list after mailing a notice to the business. Persons may be reinstated upon written request.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-313. Invitation for Bids

- A. In all competitive sealed bidding procurements, the purchasing agency shall issue an Invitation for Bids on a form approved by the State Procurement Administrator or, in the case of construction, the Assistant Director for Facilities Management. Invitation for Bids shall be issued at least 14 days before the time and date set for bid opening in the Invitation for Bids unless a shorter time is deemed necessary for a particular procurement as determined in writing by the State Procurement Administrator or, in the case of construction, the Assistant Director for Facilities Management.
- B. Content
 1. The Invitation for Bids shall include the following:
 - a. Instructions and information to bidders concerning the bid submission requirements, including the time and date set for bid opening, the address of the office to which bids are to be received, the period that the bid shall remain open, and any other special information;
 - b. The purchase description, specifications, evaluation criteria, delivery or performance schedule, and inspection and acceptance requirements; and
 - c. The contract terms and conditions, including warranty and bonding or other security requirements, as applicable.
 2. If the Invitation for Bids incorporates documents by reference, the Invitation for Bids shall specify where such documents may be obtained.
 3. The Invitation for Bids shall require the acknowledgement by the bidder of the receipt of any amendments issued.

4. An Invitation for Bids may require the submission of bid samples, descriptive literature, technical data and may require inspection or testing of a product before award.

- C. The purchasing agency shall mail or otherwise furnish Invitations for Bids or Notices of the Availability of Invitation for Bids to all prospective vendors registered at the State Procurement Office for the specific material, service or construction being bid.
- D. A copy of the Invitation for Bids shall be made available for public inspection at the procurement officer's office.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-314. Pre-bid Conferences

A procurement officer may conduct a pre-bid conference within a reasonable time but not less than seven days before the bid opening to explain the procurement requirements. Statements made at the pre-bid conference shall not be considered amendments to the invitation for bids unless a written amendment is issued pursuant to R2-7-315.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-315. Amendments to Invitations for Bids

- A. An amendment to an Invitation for Bids shall be issued if necessary to:
 1. Make changes in the Invitation for Bids;
 2. Correct defects or ambiguities; or
 3. Furnish to other bidders information given to one bidder if the information will assist the other bidders in submitting bids or if the lack of the information will prejudice the other bidders.
- B. Amendments to Invitations for Bids shall be so identified and shall be sent to all persons to whom the procurement officer distributed an Invitation for Bids.
- C. Amendments shall require that the bidder acknowledge receipt of the amendment by signing and returning the amendment with the bid or before the time and date set for opening.
- D. Amendments shall be issued within a reasonable time before bid opening to allow prospective bidders to consider them in preparing their bids. If the time and date set for bid opening does not permit sufficient time for bid preparation, the time and date for bid opening shall be extended in the amendment or, if necessary, by telegram or telephone and confirmed in the amendment.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-316. Pre-opening Modification or Withdrawal of Bids

- A. A bidder may modify or withdraw its bid at any time before bid opening if the modification or withdrawal is received in writing before the time and date set for bid opening in the location designated in the Invitation for Bids for receipt of bids. A bidder or the bidder's authorized representative may withdraw

the bid in person if, before the time and date set for bid opening, the identity of the person requesting withdrawal is established and that person signs a receipt for the bid.

- B.** All documents concerning a modification or withdrawal of a bid shall be retained in the appropriate procurement file.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-317. Late Bids, Late Withdrawals, and Late Modifications

- A.** A bid, modification or withdrawal is late if it is received at the location designated in the Invitation for Bids for receipt of bids after the time and date set for bid opening.
- B.** A late bid, late modification, or late withdrawal shall be rejected unless the bid, modification, or withdrawal is received before contract award at the location designated in the Invitation for Bids for receipt of bids and would have been timely received but for the action or inaction of state personnel directly serving the purchasing agency.
- C.** Bidders submitting bids, modifications or withdrawals that are rejected as late shall be so notified as soon as practicable.
- D.** Documentation concerning a late bid, late modification, or late withdrawal shall be retained in the appropriate procurement file.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-318. Receipt, Opening, and Recording of Bids

- A.** Except as provided in subsection (B) of this rule, each bid and modification shall be time-stamped upon receipt and stored unopened in a secure place until the time and date set for bid opening.
- B.** An envelope that is not marked as a bid or does not identify the bidder or solicitation may be opened solely for the purpose of identification. Record shall be made on the envelope of the reason for opening it, the date and time it was opened, the solicitation to which the bid responded, and the signature of the person who opened the envelope. The envelope shall be resealed and retained in the procurement file.
- C.** Bids and modifications shall be opened publicly in the sequence that they were received and in the presence of one or more witnesses at the time, date, and location designated in the Invitation for Bids for bid opening. The name of each bidder, the bid price, and other information deemed appropriate by the procurement officer shall be read aloud and recorded on a bid abstract. The name of the required witness shall also be recorded. The bid abstract shall be available for public inspection.
- D.** Bids shall not be available for public inspection before contract award pursuant to A.R.S. § 41-2533(D). After contract award, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with R2-7-104.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp.

84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-319. Mistakes in Bids

- A.** A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in R2-7-316.
- B.** After bid opening, a bid mistake based on an error in judgment may not be corrected or withdrawn. Other bid mistakes may be corrected or withdrawn pursuant to subsections (C) through (E) of this rule.
- C.** After bid opening, the procurement officer shall either waive minor informalities in a bid or allow the bidder to correct them if correction is advantageous to the state.
- D.** After bid opening, the bid may not be withdrawn and shall be corrected to the intended bid if a bid mistake and the intended bid are evident on the face of the bid.
- E.** After bid opening, the State Procurement Administrator or, in the case of construction, the Assistant Director for Facilities Management may permit a bidder to withdraw a bid if:
1. A nonjudgmental mistake is evident on the face of the bid but the intended bid is not evident; or
 2. The bidder establishes by clear and convincing evidence that a nonjudgmental mistake was made.
- F.** Mistakes shall not be corrected after award of the contract except where the State Procurement Administrator or Assistant Director for Facilities Management makes a written determination that it would be unconscionable not to allow the mistake to be corrected.
- G.** If correction or withdrawal of a bid after bid opening is permitted or denied under subsections (D) and (E) of this rule, the State Procurement Administrator or, in the case of construction, the Assistant Director for Facilities Management shall prepare a written determination showing that the relief was permitted or denied under these rules and regulations.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-320. Bid Evaluation and Award

- A.** The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and evaluation criteria set forth in the Invitation for Bids. Unless otherwise provided in the Invitation for Bids, award may be made by individual line item, by group of line items, or for the aggregate total of all line items.
- B.** A product acceptability evaluation may be conducted to determine whether a bidder's product is acceptable as set forth in the Invitation for Bids but not to determine whether one bidder's product is superior to another bidder's product. Any bidder's offering that does not meet the acceptability requirements shall be rejected as nonresponsive.
- C.** Bids shall be evaluated to determine which bidder offers the lowest cost to the state in accordance with the evaluation criteria set forth in the Invitation for Bids. Only objectively measurable criteria that are set forth in the Invitation for Bids shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, transportation cost, energy cost, ownership cost, and other identifiable costs or life cycle cost formulae. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible the evaluation factors shall be reasonable estimates based upon

information the procurement officer has available concerning future use.

- D. A contract may not be awarded to a bidder submitting a higher quality item than that designated in the Invitation for Bids unless the bidder is also the lowest bidder as determined under subsection (C) of this rule. The procurement officer may seek clarification of a bid but this rule does not permit discussions with any bidder.
- E. If there are two or more low responsive bids from responsible bidders that are identical in price and that meet all the requirements and criteria set forth in the Invitation for Bids, award shall be made by drawing lots. If time permits, the bidders involved shall be given an opportunity to attend the drawing. The drawing shall be witnessed by at least one person other than the procurement officer supervising the drawing.
- F. A record showing the basis for determining the successful bidder shall be retained in the procurement file.
- G. A written notice of award shall be sent to the successful bidder. In procurements over \$100,000, each unsuccessful bidder shall be notified of the award. Notice of award shall be made available to the public.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-321. Only One Bid Received

If only one responsive bid is received in response to an Invitation for Bids, an award may be made to the single bidder if the procurement officer determines in writing that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise the bid may be rejected pursuant to the provisions of A.R.S. § 41-2539 and:

1. New bids may be solicited; or
2. The proposed procurement may be cancelled; or
3. If the procurement officer determines in writing that the need for the material or service continues and the acceptance of the one bid is not advantageous to the state, the procurement may then be conducted under A.R.S. §§ 41-2536 or 41-2537 as appropriate.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-322. Multi-step Sealed Bidding

- A. The multi-step sealed bidding method may be used if the procurement officer determines in writing that:
 1. Available specifications or purchase descriptions are not sufficiently complete to permit full competition without technical evaluations and discussions to ensure mutual understanding between each bidder and the state;
 2. Definite criteria exist for evaluation of technical offers;
 3. More than one technically qualified source is expected to be available; and
 4. A fixed-price contract will be used.
- B. The procurement officer may hold a conference with bidders before submission or at any time during the evaluation of the unpriced technical offers.

Historical Note

Adopted as an emergency effective January 1, 1985, pur-

suant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-323. Phase One of Multi-step Sealed Bidding

- A. Multi-step sealed bidding shall be initiated by the issuance of an Invitation to Submit Technical Offers. The Invitation to Submit Technical Offers shall be issued according to R2-7-313 and shall contain the following information:
 1. Notice that the procurement shall be conducted in two phases and that priced bids will be considered only in the second phase and only from those offerors whose unpriced technical offers are found acceptable in the first phase;
 2. The best description of the material or services desired;
 3. The requirements for the technical offers, such as drawings and descriptive literature;
 4. The criteria for evaluating technical offers;
 5. The closing date and time for receipt of technical offers and the location where offers should be delivered or mailed; and
 6. A statement that discussions may be held.
- B. The Invitation to Submit Technical Offers may be amended after the submission of the unpriced technical offers. The amendment shall be distributed only to bidders who submitted unpriced technical offers, and those bidders shall be permitted to submit new unpriced technical offers or to amend the offers already submitted. If an amendment materially changes the procurement, the Invitation to Submit Technical Offers shall be cancelled in accordance with A.R.S. § 41-2539.
- C. Unpriced technical offers shall not be opened publicly but shall be opened in the presence of two or more procurement officials. Late technical proposals shall not be considered except under the circumstances set forth in R2-7-317(B). The contents of unpriced technical offers shall not be disclosed to unauthorized persons.
- D. Unpriced technical offers shall be evaluated solely in accordance with the criteria set forth in the Invitation to Submit Technical Offers and shall be determined to be either acceptable or potentially acceptable for further consideration or unacceptable. A determination that an unpriced technical proposal is unacceptable shall be in writing, state the basis of the determination and be retained in the procurement file. If the procurement officer determines a bidder's unpriced technical offer is unacceptable, the procurement officer shall notify that bidder of the determination and that the bidder shall not be afforded an opportunity to amend its technical offer.
- E. The procurement officer may conduct discussions with any bidder who submits an acceptable or potentially acceptable technical offer. During discussions, the procurement officer shall not disclose any information derived from one unpriced technical offer to any other bidder. After discussions, the procurement officer shall establish a closing date for receipt of final technical offers and shall notify in writing bidders submitting acceptable or potentially acceptable offers of the closing date. The procurement officer shall keep a record of all discussions.
- F. After receipt of final technical offers, the procurement officer shall determine whether the technical offers are acceptable for consideration in phase two or unacceptable.
- G. At any time during phase one, offers may be withdrawn.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

tive April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-324. Phase Two of Multi-step Sealed Bidding

- A.** Upon completion of phase one, the procurement officer shall issue an Invitation for Bids and conduct Phase Two under R2-7-313 through R2-7-320 as a competitive sealed bidding procurement, except that the Invitation for Bids shall be issued only to bidders whose technical offers were determined to be acceptable in phase one.
- B.** Unpriced technical offers of unsuccessful bidders shall be open to public inspection except to the extent set forth in R2-7-318.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-325. Competitive Sealed Proposals

- A.** The State Procurement Administrator shall determine in writing that competitive sealed bidding is either not practicable or not advantageous to the state. The State Procurement Administrator may make a class determination that it is either not practicable or not advantageous to the state to procure specified types of materials or services by competitive sealed bidding. The State Procurement Administrator may modify or revoke a class determination at any time.
- B.** Competitive sealed bidding may not be practicable or advantageous if it is necessary to:
 1. Use a contract other than a fixed-price type; or
 2. Conduct oral or written discussions with offerors concerning technical and price aspects of their proposals; or
 3. Afford offerors an opportunity to revise their proposals; or
 4. Compare the different price, quality, and contractual factors of the proposals submitted; or
 5. Award a contract in which price is not the determining factor.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-326. Request for Proposals

- A.** A Request for Proposals shall set forth those factors listed in R2-7-313(B) that are applicable and shall also state:
 1. The type of materials or services required and a description of the work involved;
 2. The type of contract to be used;
 3. Whether cost or pricing data is required;
 4. That offerors may designate as trade secrets or proprietary data portions of the proposals;
 5. That discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award;
 6. The minimum information that the proposal shall contain; and
 7. The closing date and time for receipt of proposals.
- B.** A Request for Proposals shall be issued at least 14 days before the closing date and time for receipt of proposals unless a shorter time is determined necessary in writing by the State Procurement Administrator.
- C.** Request for Proposal forms shall be approved by the State Procurement Administrator.

- D.** Notice of the Request for Proposals shall be issued in accordance with R2-7-313.
- E.** Vendors lists compiled and maintained in accordance with R2-7-312 shall serve as a basis for soliciting competitive sealed proposals.
- F.** Before submission of initial proposals, amendments to Requests for Proposals shall be made in accordance with R2-7-315. After submission of proposals, amendments may be made in accordance with R2-7-323(B).

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-327. Pre-proposal Conferences

Pre-proposal conferences may be convened in accordance with R2-7-314.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-328. Late Proposals, Late Modifications or Late Withdrawals

- A.** A proposal received after the closing date and time for receipt of proposals is late and shall not be considered except under the circumstances set forth in R2-7-317(B). A best and final offer received after the closing date and time for receipt of best and final offers is late and shall not be considered except under the circumstances set forth in R2-7-317(B).
- B.** A modification of a proposal received after the closing date and time for receipt of proposals is late and shall not be considered except under the circumstances set forth in R2-7-317(B).
- C.** A modification of a proposal resulting from an amendment issued after the closing date and time for receipt of proposals or a modification of a proposal resulting from discussions during negotiations shall be considered if received by the closing date and time set forth in the amendment or by the closing date and time for submission of best and final offers, whichever is applicable. If the modifications described in this subsection are received after the respective date and time described in this subsection, the modifications are late and shall not be considered except under the circumstances set forth in R2-7-317(B).
- D.** A proposal may be withdrawn at any time before the closing date and time for receipt of best and final offers. Withdrawal of a proposal after submission of best and final offers is permissible only in accordance with R2-7-333.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Section heading amended effective April 2, 1993 (Supp. 93-2).

R2-7-329. Receipt of Proposals

- A.** Each proposal received shall be date and time stamped and retained in a secure place until the closing date and time for receipt of proposals. A Register of Proposals shall be prepared and shall set forth the name of each offeror and the identity of the Request for Proposals for which the proposal was submitted.

- B. Proposals shall be opened in the presence of witnesses. The name of each offeror shall be publicly read and recorded. Before contract award, proposals and modifications shall be shown only to state personnel having a legitimate interest in them or persons assisting the state in evaluation.
- C. If only one proposal is received in response to a Request for Proposals, the procurement officer may either make an award in accordance with R2-7-334 or, if time permits, resolicit.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-330. Evaluation of Proposals

- A. Evaluation of the proposals shall be based on the evaluation factors set forth in the Request for Proposals.
- B. For the purpose of conducting discussions, the procurement officer shall determine, in accordance with subsection (A) of this rule, that proposals are either reasonably susceptible of being selected for award or unacceptable. A determination that a proposal is unacceptable shall be in writing, state the basis of the determination, and be retained in the procurement file. If the procurement officer determines that an offeror's proposal is not reasonably susceptible of being selected for award, the procurement officer shall notify that offeror of the determination and that the offeror shall not be afforded an opportunity to modify its offer.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-331. Discussions with Individual Offerors

The procurement officer shall establish procedures and schedules for conducting discussions. Disclosure of one offeror's price to another and any information derived from competing proposals is prohibited. The procurement officer shall keep a record of all discussions in a manner prescribed by the State Procurement Administrator.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-332. Best and Final Offers

If discussions are conducted pursuant to R2-7-331, the procurement officer shall issue a written request for best and final offers. The request shall set forth the date, time and place for the submission of best and final offers. Best and final offers shall be requested only once, unless the State Procurement Administrator makes a written determination that it is advantageous to the state to conduct further discussions or change the state's requirements. The request for best and final offers shall inform offerors that, if they do not submit a notice of withdrawal or a best and final offer, their immediate previous offer will be construed as their best and final offer.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April

2, 1993 (Supp. 93-2).

R2-7-333. Mistakes in Proposals

- A. Prior to the time and date set for receipt of best and final offers, any offeror with whom discussions have been held may withdraw the proposal or correct any mistake by modifying the proposal.
- B. After receipt of best and final offers, an offeror may withdraw a proposal or correct a mistake in accordance with R2-7-319(B) through (G).

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-334. Contract Award

- A. The procurement officer shall award a contract to the offeror whose proposal is determined in writing to be most advantageous to the state based on the factors set forth in the Request for Proposals. The determination shall explain the basis of the award.
- B. If the contract awarded exceeds \$100,000, each unsuccessful offeror shall be notified in writing of the award.
- C. After contract award the proposals shall be open for public inspection except to the extent that the withholding of information is permitted or required by law. If the offeror designates a portion of its proposal as confidential, it shall isolate and identify in writing the confidential portions in accordance with R2-7-104.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-335. Small Business Set-aside

- A. When practical and except as provided under subsection (D) of this rule, purchases estimated to cost less than \$10,000 shall be restricted to small businesses in accordance with the procedures set forth in subsections (B) and (C) of this rule. Purchases shall be conducted in accordance with R2-7-336.
- B. If a request for quotations is issued for the purchase, it shall contain a notice that only small businesses as defined in these rules may respond. Any request for quotations that requires written quotes shall request bidders to self-certify in their quotes that they are a small business. If verbal quotes are accepted in response to a written request for quotations or if the bidder fails to certify in a written quote that it is a small business, the procurement officer shall confirm before awarding a contract that the intended awardee is a small business. A bidder shall be presumed to be a small business if it has registered on the state's prospective vendors list as a small business. The procurement officer shall make a written notation in the contract file of that confirmation.
- C. If a request for quotation is not issued, the procurement officer shall verbally request confirmation that the bidder contacted to offer a quote is a small business. The procurement officer shall confirm before awarding a contract for a purchase that the intended awardee is a small business and shall make a written notation in the contract file of that confirmation.
- D. It is declared to be impractical for the procurement officer to determine a bidder's status as a small business under the following circumstances:
 1. Sole-source procurements as defined in A.R.S. § 41-2536;

2. Emergency procurements as defined in A.R.S. § 41-2537;
3. Purchases not expected to exceed \$1,000;
4. Purchases delegated within a purchasing agency to field offices; and
5. Purchases that have been unsuccessfully competed under subsections (B) and (C) of this rule, including failure to obtain fair and reasonable prices.

Historical Note

Adopted effective July 6, 1994 (Supp. 94-3).

R2-7-336. Procurements Not Exceeding an Aggregate Amount of \$25,000

A. Purchases estimated to cost from \$10,000 to \$25,000 shall be made in accordance with the following procedures:

1. Purchasing agencies that are not authorized by the state procurement administrator to utilize the state procurement office's electronic notification/distribution system shall either conduct purchases according to A.R.S. §§ 41-2533 or 41-2534 for purchases estimated to cost from \$10,000 to \$25,000 or request that the state procurement office conduct the procurement for them
2. If practical, purchasing agencies authorized by the state procurement administrator to utilize the electronic notification/distribution system shall conduct purchases estimated to cost from \$10,000 to \$25,000 in accordance with the procedures set forth in subsections (A)(3) through (10) of this rule.
3. The procurement officer shall issue a request for quotations. The request for quotations shall be transmitted to the state procurement office's electronic notification/distribution system.
4. Requests for quotations on the electronic notification/distribution system shall be retained on that system for a period of not less than 11 days as defined in R2-7-102(5) and computed pursuant to A.R.S. § 1-243.
5. Bidders shall submit quotes on a form approved by the state procurement administrator and the quotes shall be recorded and placed in the procurement file.
6. Award shall be made to the responsible bidder submitting the quotation which is most advantageous to the state and conforms to the solicitation.
7. If only one responsive quotation is received, a statement shall be included in the contract file setting forth the basis for determining that the price is fair and reasonable. This determination may be based on a comparison of the proposed price with prices found reasonable on previous purchases or current price lists.
8. If the procurement officer determines that it is not practical to utilize the procedures set forth in subsections (A)(3) through (6) of this rule, the procurement officer shall document in writing the reasons that compliance with those procedures is impractical. A procurement officer who determines that it is impractical to comply with subsection (A)(3) shall follow the procedures set forth in subsection (B) of this rule. A procurement officer who determines that it is impractical to comply with subsection (A)(4) shall transmit the request for quotations to the electronic notification/distribution system and retain it on that system for a number of days reasonable under the circumstances.
9. The procurement officer may determine that an emergency exists under A.R.S. § 41-2537 as the basis for not placing the purchase on the electronic notification/distribution system. The procurement officer shall report the emergency procurement in writing to the state procure-

ment office within two days of making the determination that an emergency existed.

10. Any sole-source procurement under A.R.S. § 41-2536 shall be approved in advance by the state procurement office.
 11. Purchases estimated to cost less than \$10,000 may be placed on the electronic notification/distribution system by purchasing agencies that are connected to the system.
 12. Solicitation notices of the availability of solicitations issued pursuant to R2-7-313(C) and R2-7-326(D) for purchases that exceed \$25,000 may be placed on the electronic notification/distribution system and sent to those registered vendors capable of receiving them electronically.
- B.** If practical, purchases estimated to cost from \$5,001 to \$9,999 shall be made in accordance with the following procedures:
1. If applicable under R2-7-335, bidders shall be limited to small businesses.
 2. At least three bidders shall be solicited to submit written quotations.
 3. The procurement officer shall issue a Request for Quotations to a reasonable number of vendors. The Request for Quotation need not be sent to all vendors on the vendors list but shall be sent to any vendor who specifically requests the Request for Quotation. Vendors solicited shall be rotated to the extent necessary to give all vendors a fair and equal opportunity to compete.
 4. The procurement officer shall issue the request for quotation a reasonable time as determined under the circumstances of each case by the procurement officer.
 5. Quotes shall be submitted in accordance with subsection (A)(5) of this rule. Award shall be made in accordance with subsection (A)(6) or, where applicable, subsection (A)(7) of this rule.
- C.** If practical, purchases estimated to cost from \$1,001 to \$5,000 shall be made in accordance with the following procedures:
1. If applicable under R2-7-335, bidders shall be limited to small businesses.
 2. At least three bidders shall be solicited to submit verbal or written quotations.
 3. Quotations need not be solicited from all vendors on the vendors list but shall be solicited from any vendor who specifically requests to submit a quotation. Vendors solicited shall be rotated to the extent necessary to give all vendors a fair and equal opportunity to compete.
 4. Procurements made under this rule shall also comply with R2-7-336(A)(4) and (5).
 5. Quotations shall be recorded and a record sufficient to facilitate auditing of the purchasing agency shall be placed in the procurement file.
- D.** For purchases of \$1,000 or less, purchasing agencies shall utilize procedures providing for adequate and reasonable competition and for making records to facilitate auditing of the purchasing agency.
- E.** For purposes of a multi-term contract, the total amount of the contract over the full term, including the amounts of any options to extend, will determine whether it is subject to this Section.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Amended effective July 6, 1994 (Supp. 94-3).

R2-7-337. Other Procurements Not Exceeding an Aggregate Amount of \$10,000

- A. If material, service or construction is available from only one vendor, and the purchase is estimated to cost less than \$10,000, the sole source procurement method set forth in A.R.S. § 41-2536 shall be used, except that head of the purchasing agency or the State Procurement Administrator may make the determination that the sole source method is appropriate. This subsection does not apply to procurements described in R2-7-336(C).
- B. If purchases of services specified in A.R.S. §§ 41-2513 and 41-2578 are estimated to cost less than \$10,000, the methods specified in this rule may be used in lieu of the procedure specified in A.R.S. §§ 41-2538 and 41-2578.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-338. Sole Source Procurement

- A. A using agency seeking a sole source procurement shall prepare a written request documenting the existence of a sole source condition, including the specific efforts made to determine the availability of any other source. The request shall include an explanation of the procurement need. The request shall be signed by a designated official of the using agency at the assistant director level, its equivalent or above.
- B. Except as provided in R2-7-337(A), a sole source procurement may be conducted only if the Director determines in writing before the initiation of the procurement that a sole source procurement is required. Sole source procurement shall not be used unless there is clear and convincing evidence that there is only one source for the required material or service and that no other type of material or service will satisfy the requirements of the using agency. The using agency requesting sole source procurement shall provide written evidence to support a sole source determination.
- C. The procurement officer shall negotiate with the single supplier, to the extent practicable, a contract advantageous to the state. The procurement officer shall use the state's terms and conditions as the contract document unless the procurement officer receives an exemption from the State Procurement Administrator.
- D. The provisions of this rule apply to all sole source procurements unless emergency conditions exist as defined in A.R.S. § 41-2537.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-339. Emergency Procurements

- A. An emergency condition may arise from, but is not limited to, floods, epidemics, riots, or equipment failures. An emergency condition creates an immediate and serious need for materials, services, or construction that cannot be met through normal procurement methods and that seriously threatens the functioning of state government, the preservation or protection of property or the health or safety of any person.
- B. An emergency procurement shall be limited to those materials, services, or construction necessary to satisfy the emergency need.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-340. Emergency Procurement Procedure

- A. A using agency seeking an emergency procurement shall prepare a written request documenting the existence of an emergency condition and explaining the procurement need. The request shall be signed by a designated official of the using agency at the assistant director level, its equivalent or above.
- B. The request shall be submitted to the Assistant Director for Finance, with a copy to the State Procurement Administrator.
- C. Except as provided in subsections (E) and (F) of this rule, the Director shall determine in writing whether to grant the request. If the request is approved, the determination shall state the manner in which the procurement is to be effected, whether procurement authority is delegated to the using agency, and the limits of the determination.
- D. A copy of each request and determination processed under this procedure shall be kept on file in the using agency requesting the emergency procurement, the office of the Director, and the State Procurement Office.
- E. If the nature of the emergency does not permit submission of a written request, the using agency may make a verbal request to the Director who may make a verbal determination and delegation. The request required under subsection (A) of this rule shall be submitted to the Director within two working days following the initiation of the emergency procurement.
- F. The Director may approve a written request subsequent to the procurement if:
 1. The emergency necessitated immediate response and it was impracticable to contact the Director;
 2. The procurement was made with as much competition as was practicable under the circumstances;
 3. The price paid was reasonable; and
 4. The request required under subsection (A) of this rule was submitted to the Director within two working days following the initiation of the emergency procurement.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-341. Competitive Selection Procedures for Services of Clergy, Physicians, Dentists, Legal Counsel, or Certified Public Accountants

- A. The services of clergy, physicians, dentists, legal counsel, or certified public accountants, as specified in A.R.S. § 41-2513, shall be procured in accordance with R2-7-342 through R2-7-348, except as authorized under A.R.S. §§ 41-2535, 41-2536 or 41-2537.
- B. Price shall be an evaluation factor in the procurements of the services specified in subsection (A) of this rule unless the State Procurement Administrator determines in writing that price as an evaluation factor is either not practicable or not advantageous to the state.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Amended effective April

2, 1993 (Supp. 93-2).

R2-7-342. Statement of Qualifications

- A.** If the services specified in R2-7-341 are needed on a recurring basis, the procurement officer may solicit persons engaged in providing the services to submit annual statements of qualifications on a prescribed form that shall include the following information:
1. Technical education and training;
 2. General or special experience, certifications, licenses, and memberships in professional associations, societies, or boards;
 3. An expression of interest in providing a particular service; and
 4. Any other pertinent information requested by the procurement officer.
- B.** Persons who have submitted statements of qualifications may amend those statements at any time by filing a new statement.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-343. Request for Proposals

The Request for Proposals shall be in accordance with R2-7-326. The Requests for Proposals shall also be distributed to persons who have submitted statements of qualifications under R2-7-342 for the particular services sought.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1).

R2-7-344. Receipt of Proposals

Proposals shall be received and opened in accordance with R2-7-329. Mistakes in proposals may be corrected or proposals withdrawn in accordance with R2-7-333. Late proposals, late modifications, or late withdrawals shall be considered in accordance with R2-7-328.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-345. Evaluation of Proposals

Proposals shall be evaluated in accordance with R2-7-330.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1).

R2-7-346. Discussions with Individual Offerors

The purchasing agency conducting the procurement may conduct discussions with any offeror whose proposal is reasonably susceptible to being selected for award. Discussions shall be conducted in accordance with R2-7-331. Best and final offers shall be requested in accordance with R2-7-332.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp.

84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-347. Evaluation and Contract Award Where Price is an Evaluation Factor

If price is one of the evaluation factors for contract award set forth in the Request for Proposals, the procurement officer shall evaluate proposals and award the contract in accordance with R2-7-334.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-348. Selection and Contract Award Where Price is not an Evaluation Factor

- A.** If price is not a factor, the purchasing agency shall determine in writing the acceptable proposals and rank the three most qualified offerors.
- B.** The offeror determined to be best qualified shall submit cost or pricing data to the purchasing agency.
- C.** The purchasing agency shall negotiate a contract with the best qualified offeror at compensation determined in writing to be fair and reasonable.
- D.** If the head of the purchasing agency and the best qualified offeror fail to negotiate a contract, the head of the purchasing agency shall notify the offeror in writing of the termination of negotiations. The head of the purchasing agency may then enter into negotiations with the next most qualified offeror. If negotiations fail, they shall be terminated, the offeror given notice, and negotiations commenced with the next most qualified offeror.
- E.** If the purchasing agency is unable to negotiate a contract with any of the offerors initially selected as the best qualified offerors, proposals may be resolicited or additional offerors may be selected based on original, acceptable proposals in the order of their qualification ranking. Negotiations may continue until a contract is awarded.
- F.** A written record in a manner prescribed by the State Procurement Administrator shall be maintained in the procurement file.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-349. Annual Report

Each purchasing agency shall submit annually to the Director a report of all service contracts awarded under A.R.S. § 41-2538 in the preceding fiscal year. The report shall identify the parties to the contract, the contract amount, duration, and the services performed.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1).

R2-7-350. Cancellation of Solicitations; Rejection of Bids or Proposals

Each solicitation issued by the state shall state that the solicitation may be cancelled or bids or proposals rejected.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1).

R2-7-351. Cancellation of Solicitation Before the Date and Time for Receipt of Bids and Proposals

- A. Before the date and time that receipt of bids or proposals are due, a solicitation may be cancelled in whole or in part if the procurement officer determines in writing that cancellation is advantageous to the state.
- B. If a solicitation is cancelled before the date and time that receipt of bids or proposals are due, notice of cancellation shall be sent to all persons to whom the procurement officer distributed a solicitation. The notice of cancellation shall identify the solicitation and briefly explain the reason for cancellation.
- C. Any bids or proposals that have been received shall be returned unopened to the bidders or offerors.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-352. Cancellation of Solicitation After Receipt of Bids or Proposals

- A. After receipt of bids or proposals but before award, a solicitation may be cancelled and all bids or proposals may be rejected in whole or in part if the procurement officer determines in writing that cancellation and rejection are advantageous to the state.
- B. A notice of cancellation and rejection shall be sent to all bidders or offerors submitting bids or proposals in accordance with R2-7-351(B).
- C. Bids or proposals received under the cancelled solicitation shall be retained in the procurement file. If the purchasing agency intends to issue another solicitation within a reasonable time after cancellation for the same materials, services or construction as under the cancelled solicitation, the purchasing agency may withhold from public inspection bids or proposals submitted under the cancelled solicitation if the procurement officer makes a written determination that such action is in the state's best interest. After award of a contract under the second solicitation, bids or proposals submitted in response to the cancelled solicitation shall be open for public inspection unless non-disclosure is required under R2-7-105(E).
- D. The determination to cancel a solicitation and reject bids or proposals shall be made a part of the procurement file and shall be available for public inspection.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-353. Rejection of Individual Bids or Proposals

- A. A bid may be rejected if:
 - 1. The bidder is determined to be nonresponsive pursuant to R2-7-354; or
 - 2. The bid is nonresponsive in accordance with R2-7-320.
- B. A proposal or quotation may be rejected if:
 - 1. The person responding to the solicitation is determined to be nonresponsive pursuant to R2-7-354; or

- 2. It is unacceptable;
- 3. The proposed price is unreasonable; or
- 4. It is otherwise not advantageous to the state.

- C. Bidders or offerors whose bids or proposals are rejected under subsection (A) or (B) of this rule shall be notified in writing for the rejection. Record of the rejection shall be made part of the procurement file.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-354. Responsibility of Bidders and Offerors

- A. A procurement officer shall determine that a bidder or offeror is responsible before awarding a contract to that bidder or offeror. The procurement officer's signature on the contract constitutes a determination that the bidder or offeror awarded the contract is responsible.
- B. Factors to be considered in determining if a bidder or offeror is responsible include:
 - 1. The bidder's or offeror's financial, physical, personnel or other resources, including subcontracts;
 - 2. The bidder's or offeror's record of performance and integrity;
 - 3. Whether the bidder or offeror is qualified legally to contract with the state; and
 - 4. Whether the bidder or offeror supplied all necessary information concerning its responsibility.
- C. The procurement officer may establish specific responsibility criteria for a particular procurement. Any specific responsibility criteria shall be set forth in the solicitation.
- D. If a procurement officer determines that a bidder or offeror is nonresponsive, the determination shall be in writing and set forth the basis for the determination. A copy of the determination shall be promptly sent to the nonresponsive bidder or offeror. The final determination shall be made part of the procurement file.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-355. Prequalification

- A. A prospective contractor need not be prequalified to be awarded a contract. Prequalification does not represent a determination of responsibility.
- B. The existence of a qualified product list pursuant to R2-7-404(D)(2) does not constitute prequalification of any prospective supplier of that product.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1).

R2-7-356. Bid and Performance Bonds for Material or Service Contracts

- A. Bid and performance bonds or other security may be required for material or service contracts if the procurement officer determines that such requirement is advantageous to the state. The requirement for bonds or other security shall be included in the solicitation.

- B.** Acceptable bid or performance security shall be limited to:
1. A surety bond executed solely by a surety company or companies holding a certificate of authority to transact surety business in this state issued by the Director of the Department of Insurance pursuant to A.R.S. Title 20, Chapter 2, Article 1, and in a form prescribed by R2-7-505; or
 2. A certified or cashier's check.
- C.** Bid or performance bonds shall not be used as a substitute for a determination of bidder responsibility.
- D.** If a bid is withdrawn at any time before bid opening, any bid security shall be returned to the bidder.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-357. Submission of Cost or Pricing Data

- A.** Cost or pricing data shall be submitted except as provided in subsection (E) of this rule if the procurement officer determines in writing that:
1. The amount of an original or adjusted price of a contract to be awarded by competitive sealed proposals, emergency procurement, sole source procurement, or pursuant to A.R.S. § 41-2578(D)(1) may exceed \$100,000; or
 2. The price adjustment of a contract awarded by competitive sealed bidding will result in an increase in cost in excess of \$100,000; or
 3. If the submission of cost or pricing data is otherwise advantageous to the state.
- B.** Cost or pricing data shall be submitted to the procurement officer prior to the commencement of price negotiations at the time and in the manner prescribed by the procurement officer.
- C.** In an emergency, cost or pricing data may be submitted at a reasonable time after the contract is awarded.
- D.** The offeror or contractor shall keep all cost or pricing data submitted current until the negotiations are concluded.
- E.** Pursuant to A.R.S. § 41-2543(C), the State Procurement Administrator may waive the requirement that cost or pricing data be submitted if such officer determines in writing that the waiver is advantageous to the state.
- F.** A copy of all determinations by the procurement officer or the State Procurement Administrator that pertain to the submission of cost or pricing data shall be maintained in the contract file.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-358. Certification of Current Cost or Pricing Data

- A.** As soon as practicable after agreement is reached on an original or adjusted contract price, the offeror or contractor shall certify in a form approved by the Director that the cost or pricing data submitted in support of a proposal pursuant to R2-7-357 is accurate, complete, and current as of a mutually determined date.
- B.** The procurement officer may waive the requirement that cost or pricing data be certified if he determines in writing that adequate price competition exists after examining cost or pricing data that is submitted in support of a proposal.

- C.** Additional certification or submission of additional data is not required if an option exercised subsequent to initial negotiation is based upon previously certified cost or pricing data.
- D.** The solicitation shall include a notice that certified cost or pricing data must be submitted.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-359. Refusal to Submit Cost or Pricing Data

- A.** If the offeror fails to submit cost or pricing data in the required form, the procurement officer may reject the offer.
- B.** If a contractor fails to submit data to support a price adjustment in the form required, the procurement officer may:
1. Reject the price adjustment;
 2. Set the amount of the price adjustment subject to the contractor's rights under Article 9 of the Arizona Procurement Code.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1).

R2-7-360. Defective Cost or Pricing Data

- A.** The procurement officer may reduce the contract price if, upon a written determination, the cost or pricing data is defective.
- B.** The contract price shall be reduced in the amount of the defect plus related overhead and profit or fee if the procurement officer relied upon the defective data in awarding the contract.
- C.** Any dispute as to the existence of defective cost or pricing data or the amount of an adjustment due to defective cost or pricing data may be appealed as a contract controversy under Article 9. Notwithstanding an appeal, the contract price shall be adjusted.
- D.** If certification of current cost or pricing data is required, the awarded contract shall include notice of the right of the state to a reduction in price if certified cost or pricing data is subsequently determined to be defective.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1).

R2-7-361. Price or Cost Analysis

The procurement officer shall conduct a price or cost analysis if submission of price or cost data is required.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1).

R2-7-362. Authority to Use Contract Types

- A.** The following contract types may be used by the procurement officer without obtaining a prior approval by the State Procurement Administrator:
1. Fixed-price contract, except fixed price cost incentive contract;
 2. Lease; and
 3. Lease with purchase option.

- B.** Any other type of contract may be used only if the State Procurement Administrator determines in writing prior to solicitation that the use of the contract is permitted by law and is advantageous to the state.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-363. Fixed-price Contracts

- A.** A fixed-price contract may be used if:
1. The extent and type of work necessary to meet state requirements can be reasonably specified; and
 2. The cost can be reasonably estimated.
- B.** A firm fixed-price contract may be used if prices advantageous to the state can be established at the outset of the contract.
- C.** Fixed-price contract with price adjustment
1. The solicitation for a fixed-price contract with price adjustment and the contract shall specify the basis for determining the price adjustment.
 2. Notice of price adjustment shall be given by the contractor in the manner and within the time specified in the contract.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1).

R2-7-364. Lease and Lease-purchase Contracts

- A.** A lease may be entered into only after the procurement officer determines in writing that:
1. A lease is advantageous to the state;
 2. All conditions for renewal and costs of termination are set forth in the lease; and
 3. The lease is not used to circumvent required procurement procedures.
- B.** A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive sealed bidding or competitive sealed proposals and only after the procurement officer makes the determination required by R2-7-367(B).

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-365. Cost-reimbursement and Cost Incentive Contracts

A cost-reimbursement or cost incentive type contract may be used only when the State Procurement Administrator determines in writing that the use of such contract is advantageous to the state.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-366. Time and Materials Contracts and Labor Hour Contracts

- A.** Time and materials and labor hour contracts shall, to the extent possible, contain a stated ceiling or an estimate of a contractual amount that shall not be exceeded without prior approval of the State Procurement Administrator.
- B.** A time and materials or labor hour contract may only be used if the State Procurement Administrator determines in writing that:
1. Personnel have been assigned to closely monitor the performance of the work; and
 2. It is advantageous to the state to use such contract; and
 3. No other contract type is practicable.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-367. Option Provisions

- A.** If the procurement officer determines that a contract is to include an option for renewal, extension, or purchase, the applicable option provisions shall be included in the solicitation.
- B.** Before exercising any option for renewal, extension, or purchase the procurement officer shall determine in writing that a competitive procurement is not more advantageous to the state than exercise of the particular option.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1).

R2-7-368. Approval of Accounting System

Before the award of any contract except a firm fixed-price contract, the procurement officer shall determine in writing that the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated and is adequate to allocate costs pursuant to Article 7.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1).

R2-7-369. Anticompetitive practices among bidders or offerors

Upon submitting a bid or offer, the bidder or offeror must certify that the submission of the bid or offer did not include collusion or other anticompetitive practices.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1).

R2-7-370. Record of Procurement Actions

A record of contracts in excess of \$10,000 made under A.R.S. §§ 41-2536 or 41-2537 shall be maintained pursuant to A.R.S. § 41-2551.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6).

84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Amended effective April 2, 1993 (Supp. 93-2).

ARTICLE 4. SPECIFICATIONS

R2-7-401. Definitions

In this Article, unless the context otherwise requires:

1. "Brand name or equal specification" means a specification that uses one or more manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet state requirements, and that provides for the submission of equivalent products.
2. "Brand name specification" means a specification limited to one or more items by manufacturers' names or catalogue numbers.
3. "Proprietary specification" means a specification that describes a material made and marketed by a person having the exclusive right to manufacture and sell such material and excludes other material with similar quality, performance or functional characteristics from being responsive to the solicitation.
4. "Qualified products list" means an approved list of materials described by model or catalogue numbers that, prior to competitive solicitation, the state has determined will meet the applicable specification requirements.
5. "Specification for a common or general use item" means a specification that has been developed and approved for repeated use in procurements pursuant to R2-7-404(A).
6. "Standard commercial material" means material that, in the normal course of business, is customarily maintained in stock or readily available by a manufacturer, distributor or dealer for the marketing of such material.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Definitions placed in alphabetical order (Supp. 93-2).

R2-7-402. Preparation of Specifications

- A. Specifications shall be prepared by the Director, or by using agencies pursuant to R2-7-408 or by contract pursuant to R2-7-410.
- B. In an emergency under A.R.S. § 41-2537, any necessary specifications may be utilized by the Purchasing or using agency without regard to the provisions of this Chapter.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-403. Content of Specifications

- A. A specification may provide alternate descriptions of materials, services, or construction items where two or more design, functional, or performance criteria will satisfactorily meet the state's requirements.
- B. To the extent practicable, a specification shall not include any solicitation term or condition or any contract term or condition.
- C. If a specification for a common or general use item has been developed in accordance with R2-7-404(A) or a qualified products list has been developed in accordance with R2-7-404(D) for a particular material, service, or construction item, it shall be used unless the State Procurement Administrator

makes a written determination that its use is not advantageous to the state and that another specification shall be used.

- D. To the extent practicable, specifications shall emphasize functional or performance criteria. To facilitate the use of such criteria, using agencies shall use reasonable efforts to include the principal functional or performance requirements as a part of their purchase requisitions.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-404. Types of Specifications

- A. Specifications for common or general use items. To the extent practicable, a specification for common or general use item shall be prepared and utilized when:
 1. A material, service or construction item is used in common by several using agencies or used repeatedly by one using agency, and the characteristics of the material, service, or construction item, as commercially produced or provided, remain relatively stable while the frequency or volume of procurements is significant;
 2. The state's recurring needs require uniquely designed or specially produced items; or
 3. The State Purchasing Administrator or using agency authorized to prepare such specifications finds it to be advantageous to the state.
- B. Brand name or equal specification
 1. A brand name or equal specification may be used when the procurement officer determines in writing that use of a brand name or equal specification is advantageous to the state and that:
 - a. No specification for a common or general use item or qualified products list is available;
 - b. Time does not permit the preparation of another form of specification, other than a brand name specification; or
 - c. The nature of the product or the state's requirements makes use of a brand name or equal specification suitable for the procurement.
 2. Such determination may be made for categories of materials, services, or construction items or, in appropriate circumstances, for an entire procurement action even though a number of different items are being procured.
 3. A brand name or equal specification shall designate as many different brands as are practicable as "or equal" references.
 4. A brand name or equal specification shall include a description of the particular design, functional, or performance characteristics that are required unless the procurement officer authorized to approve specifications determines that the essential characteristics of the brand names designated in the specifications are commonly known.
 5. A solicitation that uses a brand name or equal specification shall explain that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to those brands designated shall qualify for consideration.
- C. Brand name specification
 1. A brand name specification may be prepared and utilized only if the State Procurement Administrator makes a

written determination that only the identified brand name item will satisfy the state's needs.

2. If a brand name specification is utilized the procurement officer shall, to the extent practicable, identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve the maximum practicable competition. If only one source can supply the requirement, the procurement shall be made under A.R.S. § 41-2536.

D. Qualified products list.

1. A qualified products list may be prepared and utilized when the procurement officer authorized to develop qualified products lists determines that testing or examination of the materials or construction items prior to issuance of the solicitation is desirable or necessary in order to best satisfy state requirements.
2. The procurement officer shall solicit as many potential suppliers as practicable to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration in accordance with the schedule or procedure established for this purpose. The qualified products list shall not be modified after the solicitation is issued.
3. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with requirements published by the State Procurement Office.
4. Qualified products lists' test results shall protect the identity of the suppliers.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-405. Confidentiality

- A. Specifications and any written determination or other document generated or used in the development of a specification shall be available for public inspection, except to the extent that the withholding of such information is permitted or required by law.
- B. If the supplier believes that information it has provided to the procurement officer contains trade secrets or proprietary data that should be kept confidential, a statement advising the procurement officer of this fact must accompany the specification in accordance with R2-7-104.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-406. Reserved

R2-7-407. Using Agency Advice and Assistance

The using agency shall submit advice and assistance in the development of specifications or plans pursuant to a request from the Director.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-408. Preparation and Utilization of Specifications and Plans by Using Agencies

- A. The Director may delegate the authority to prepare and utilize specifications or plans to using agencies pursuant to R2-7-201.
- B. Using agencies delegated the authority to prepare and utilize specifications or plans shall comply with the requirements of Article 4.
- C. Notwithstanding the provisions of this rule or R2-7-410, the Director retains the authority to approve or disapprove all specifications and plans.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-409. Requirements of Nonrestrictiveness

- A. Nonexclusive specifications
 1. Unless otherwise permitted by this Chapter, all specifications shall describe the state's requirements in a manner that does not unnecessarily exclude a material, service, or construction item.
 2. Proprietary specifications shall not be used unless the State Procurement Administrator determines in writing that such specifications are required by demonstrable technological justification and that it is not practicable or advantageous to use a less restrictive specification. Past success in the material's performance, traditional purchasing practices, or inconvenience of drawing specifications do not justify the use of proprietary specifications.
- B. To the extent practicable, the state shall use accepted commercial specifications and shall procure standard commercial materials.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-410. Preparation of Specifications or Plans by Persons Other Than State Personnel

- A. The Director may contract for the preparation of specifications or plans for public contracts by persons other than state personnel including but not limited to architects, engineers, designers, and other draftsmen.
- B. The requirements of this Article shall apply to all specifications or plans prepared by persons other than state personnel pursuant to subsection (A) of this rule. Contracts for the preparation of specifications or plans by persons other than state personnel shall require them to adhere to such requirements.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-411. Conflict of Interest

- A. No person preparing or assisting in the preparation of specifications, plans or scopes of work shall receive any direct benefit from the utilization of those specifications, plans or scopes of work.
- B. A procurement officer may waive the restriction set forth in subsection (A) of this rule if the procurement officer deter-

mines in writing that its application would not be in the state's best interest. The procurement officer shall use as guidance in making that determination the organizational conflicts of interest regulations set forth in the Code of Federal Regulations, 48 CFR Chapter 1, Subpart 9.5 (October 1, 1991), excluding later amendments or editions, incorporated by reference herein and on file with the Secretary of State. The determination shall state the specific reasons that the restriction in subsection (A) of this rule has been waived.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

ARTICLE 5. PROCUREMENT OF CONSTRUCTION AND SPECIFIED PROFESSIONAL SERVICES

R2-7-501. Definitions

In this Article, unless the context otherwise requires:

1. "Force account" means work performed by the state's regularly employed personnel.
2. "Specified professional services" means services of architect, engineer, land surveying, assayer, geologist and landscape architect.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-502. Coordination with the Department

A purchasing agency procuring construction or architectural or engineering services for construction shall coordinate the procurement and contract administration with the Facilities Management Division of the Department as required by A.R.S. § 41-790 et seq.

Historical Note

Adopted effective April 2, 1993 (Supp. 93-2).

R2-7-503. Bid Security

- A. Invitations for Bid on state construction contracts shall require the submission of bid security in an amount equal to at least 10% of the bid, at the time the bid is submitted. If a bidder fails to submit the required bid security with the bid, the bid shall be deemed nonresponsive except as provided by R2-7-503(C).
- B. Acceptable bid security. Acceptable bid security shall be limited to:
 1. An annual or one-time surety bond executed solely by a surety company or companies holding a certificate of authority to transact surety business in this state issued by the Director of the Department of Insurance pursuant to A.R.S. Title 20, Chapter 2, Article 1 and in a form as prescribed by A.R.S. § 41-2573 and R2-7-505; or
 2. A certified or cashier check.
- C. Nonsubstantial failure to comply. The Assistant Director for Facilities Management may determine that noncompliance is nonsubstantial if:
 1. Only one bid is received and there is not sufficient time to rebid; or
 2. The amount of the bid security submitted, although less than the amount required by the Invitation for Bids, is equal to or greater than the difference between the apparent low bid and the next higher acceptable bid; or
 3. The bid security is inadequate as a result of correcting or modifying a bid in accordance with R2-7-319, if the bid-

der increases the amount of security to required limits within two days after notification.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-504. Performance and Payment Bonds

- A. Acceptable performance and payment bonds shall be limited to a performance bond and a payment bond executed solely by a surety company or companies holding a certificate of authority to transact surety business in this state issued by the Director of the Department of Insurance pursuant to A.R.S. Title 20, Chapter 2, Article 1 and in a form prescribed by A.R.S. § 41-2574 and R2-7-505.
- B. The performance bond and the payment bond shall be delivered by the contractor to the state at the same time the contract is executed. If a contractor fails to deliver the required performance bond or payment bond, the contractor's bid shall be rejected, its bid security shall be enforced, and award of the contract shall be made pursuant to this Chapter.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-505. Bond Forms

Bid bonds, performance bonds, and labor and material payment bonds shall be executed on forms substantially equivalent to SPO 301, SPO 302, and SPO 303, respectively, on file with the Secretary of state and incorporated by this reference.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-506. The Form of Substitute Security

The form of security that may substitute for contract payment retention is limited to the following:

1. An assignment of time certificates of deposit by financial institutions licensed by this state;
2. Share certificate of a saving and loan institution or credit union authorized to transact business in this state; or
3. Security issued or guaranteed as to principal and interest by:
 - a. The United States;
 - b. The state;
 - c. Counties, municipalities and school districts within this state.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-507. Conditions for Use of Substitute Security

- A. A contractor may submit substitute security to replace contract payment retention if:
 1. The use of substitute security is requested of the Director for work performed under the contract;

2. The substitute security is submitted prior to each progress payment in an amount of no less than 10% of each progress payment or once in an amount no less than 10% of the total contract amount;
 3. The interest earned on such security shall accrue to the benefit of the contractor but shall be retained until the procurement officer has approved completion and acceptance of all work to be performed under the contract;
 4. The term of such security shall not mature until after the estimated contract completion date;
 5. The security shall mature no later than one year after the estimated contract completion date; and
 6. The substitute security shall not be released without written approval by procurement officer.
- B.** A contractor may submit a single substitute security for more than one project provided that:
1. The amount of such security is no less than 10% of the aggregate amount of all contracts or all progress payments;
 2. The Director determines that such single substitute security is advantageous to the state; and
 3. Such security complies with the requirements of subsection (A) of this rule.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective January 13, 1987 (Supp. 87-1). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-508. Repealed**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Repealed effective April 2, 1993 (Supp. 93-2).

R2-7-509. Procurement of Specified Professional Services

- A.** Annual statement of qualifications and performance data. Firms desiring to provide specified professional services to the state may submit annually to the State Procurement Office a statement of qualifications and performance data which shall include, but not be limited to, the following:
1. The education, training, and qualifications of members of the firm and key employees;
 2. An executed United States General Services Administration Standard Form 254;
 3. Any other pertinent information requested by the procurement officer.
- B.** Firms may amend statements of qualifications and performance by filing a new statement.
- C.** The Director shall publish an informational brochure, which shall be available in the State Procurement Office, to assist firms desiring to provide specified professional services.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-510. Public Notice of Specified Professional Services

- A.** Prior to public notice of the need for specified professional services, the head of the using agency shall determine in writ-

ing that the services to be acquired are services defined in A.R.S. § 41-2571 and may recommend that the services be obtained pursuant to rule R2-7-514 or R2-7-515.

- B.** Notice of need for specified professional services shall be given by the procurement officer pursuant to R2-7-313(C). Such notice shall be issued not less than 14 days in advance of when responses must be received. The notice shall contain a statement of the services required that adequately describes the project and specifies how a solicitation containing specific information on the project may be obtained.
- C.** A request for proposals or request for supplemental statements that describes the state's project requirements, shall be issued to all firms responding to the public notice. Notice of any pre-proposal conference and the criteria to be used in selecting firms shall be included in the request.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-511. Specified Professional Services Selection Committee

- A.** If a contract for specified professional services is expected to exceed the amount established by A.R.S. § 41-2535, the head of a purchasing agency shall designate an appropriate selection committee. The selection committee shall be comprised of an uneven number and not less than three members who shall serve at the pleasure of the head of the purchasing agency. Selection committee members shall include:
1. The procurement officer to serve as chairman;
 2. A representative of the using agency;
 3. A person registered in one of the professions involved in the proposed project;
 4. If the estimated project cost is expected to exceed \$2,000,000, a non-state employee registered in one of the professions involved in the proposed project.
 5. Such other members as the head of a purchasing agency shall deem appropriate.
- B.** The selection committee shall evaluate:
1. Annual statement of qualifications and performance data of those firms responding to the request;
 2. Proposals or supplemental statements.
- C.** No person serving on the selection committee shall receive any direct or indirect benefit from the project under consideration.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-512. Cancellation or Rejection of the Solicitation

The solicitation may be cancelled or proposals rejected in accordance with R2-7-350, R2-7-351, R2-7-352 and R2-7-353.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-513. Selection Committee Evaluation

- A.** To the extent possible, the selection committee shall, when using the single negotiated fee method pursuant to R2-7-514 select no fewer than three firms; or, when using the multiple

fee proposals method pursuant to R2-7-515, select no fewer than five firms as being professionally and technically qualified. These firms shall be evaluated to determine each firm's:

1. Capabilities and qualifications for performing the contract; and
 2. Methods of approach.
- B.** The selection committee shall prepare a memorandum of the selection process which indicates how the evaluation criteria were applied to determine the ranking of the three most qualified firms.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-514. Single Negotiated Fee Method of Award

- A.** The procurement officer shall negotiate a contract with the most qualified firm for the required services at compensation determined in writing to be fair and reasonable to the state. Contract negotiations shall be directed toward:
1. Making certain that the firm has a clear understanding of the scope of the work, specifically, the essential requirements involved in providing the required services;
 2. Determining that the firm will make available the necessary personnel and facilities to perform the services within the required time; and
 3. Agreeing upon compensation that is fair and reasonable, taking into account the estimated value, scope, complexity, and nature of the required services.
- B.** The firm selected for award shall submit and certify cost and pricing data pursuant to A.R.S. § 41-2543.
- C.** Failure to negotiate with the most qualified firm
1. If fair and reasonable compensation, contract requirements, and contract documents cannot be agreed upon with the most qualified firm, the procurement officer shall advise the firm in writing of the termination of negotiations.
 2. The procurement officer shall negotiate with the next most qualified firm in sequence or cancel the solicitation.
- D.** Written notice of the award shall be sent to the firm with whom the contract is successfully negotiated. Each firm with whom discussions were held shall be notified of the award. Notice of award shall be made available to the public.
- E.** After award of the contract, a memorandum setting forth the principal elements of the negotiation shall be prepared by the procurement officer. Such memorandum shall contain sufficient detail to reflect the significant considerations controlling price and the other terms of the contract. Such memorandum shall be included in the procurement file and be available to the public upon request.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-515. Multiple Fee Proposal Method of Award

- A.** The director or head of a purchasing agency shall select a professional architect, engineer, land surveyor, landscape architect, assayer or geologist, as appropriate, to prepare and seal a scope of services.
- B.** After determination of the three firms deemed to be the most highly qualified, the selection committee shall issue a request for the fee proposal to such firms.

- C.** Firms shall be afforded fair and equal treatment with respect to any opportunity for discussions and revisions of fee proposals. The procurement officer shall establish procedures and schedules for conducting discussions. If during discussions there is a need for any substantial clarification or change in the scope of services, it shall be amended to incorporate such clarification or change. Disclosure of any information derived from competing fee proposals is prohibited. Any substantial oral clarification of a fee proposal shall be reduced to writing by the offeror. The procurement officer shall keep a record of the date, time, place, purpose, and persons in attendance at such meetings.
- D.** The procurement officer shall establish a common date and time for the submission of final offers. Final offers shall be submitted only once, provided, however, the Assistant Director for Facilities Management may make a written determination that it is advantageous to the state to conduct additional discussions or change the state's requirements and require another submission of final offers. Otherwise, no discussions of or changes in the final offers shall be allowed prior to selection for award. Firms shall also be informed that if they do not submit a notice of withdrawal or another final offer, their immediate previous offer will be construed as their final offer.
- E.** Notice of award shall be made in accordance with R2-7-514(D) and (E).

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

ARTICLE 6. CONTRACT CLAUSES

R2-7-601. Standard Terms and Conditions

State governmental units that have been delegated procurement authority by the Director shall use as standard terms and conditions in contracts for materials, services or construction clauses approved by the Director.

Historical Note

Adopted effective April 2, 1993 (Supp. 93-2).

ARTICLE 7. COST PRINCIPLES

R2-7-701. Cost Principles

The cost principles set forth in the Code of Federal Regulations, 48 CFR Chapter 1, Subchapter e, Part 31, (October 1, 1991) excluding later amendments and editions, on file with the Secretary of State and incorporated by this reference, shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions that provide for the reimbursement of costs.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

ARTICLE 8. TRANSFERRED

Article 8, consisting of Sections R2-7-801 through R2-7-810, transferred to Title 2, Chapter 15, Article 3, Sections R2-15-301 through R2-15-210, Department of Administration, General Services Division.

R2-7-801. Transferred**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Transferred to R2-15-801 (Supp. 91-3).

R2-7-802. Transferred**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Transferred to R2-15-802 (Supp. 91-3).

R2-7-803. Transferred**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Transferred to R2-15-803 (Supp. 91-3).

R2-7-804. Transferred**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Transferred to R2-15-804 (Supp. 91-3).

R2-7-805. Transferred**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Transferred to R2-15-805 (Supp. 91-3).

R2-7-806. Transferred**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Transferred to R2-15-806 (Supp. 91-3).

R2-7-807. Transferred**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Transferred to R2-15-807 (Supp. 91-3).

R2-7-808. Transferred**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Transferred to R2-15-808 (Supp. 91-3).

R2-7-809. Transferred**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Transferred to R2-15-809 (Supp. 91-3).

R2-7-810. Transferred**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Transferred to R2-15-810 (Supp. 91-3).

ARTICLE 9. LEGAL AND CONTRACTUAL REMEDIES**R2-7-901. Definitions**

In this Article, unless the context otherwise requires:

1. "Affiliate" means any person whose governing instruments require it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. It may also include persons doing business under a variety of names, or where there is a parent-subsidiary relationship between persons.
2. "Debarment" means an action taken by the Director under R2-7-925 to prohibit a person from participating in state procurements.
3. "Filed" means delivery to the procurement officer or to the Director, whichever is applicable. A time/date stamp affixed to a document by the office of the procurement officer or the Director, whichever is applicable, shall be determinative of the time of delivery for purposes of filing.
4. "Governing instruments" means those legal documents that establish the existence of an organization and define its powers including articles of incorporation or association, constitution, charter and by-laws.
5. "Interested party" means an actual or prospective bidder or offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract or by the failure to award a contract. Whether an actual or prospective bidder or offeror has an economic interest will depend upon the circumstances of each case.
6. "Suspension" means an action taken by the Director under R2-7-930 temporarily disqualifying a person from participating in state procurements.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-902. Resolution of Bid Protests

The procurement officer of the contracting agency issuing the solicitation shall have the authority to resolve bid protests. Appeals from the decisions of the procurement officer may be made to the Director pursuant to R2-7-909.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp.

84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-903. Filing of a Protest

- A.** Any interested party may protest a solicitation issued by the state, or the proposed award or the award of a state contract.
- B.** Content of protest. The protest shall be in writing and shall include the following information:
 1. The name, address and telephone number of the protester;
 2. The signature of the protester or its representative;
 3. Identification of the purchasing agency and the solicitation or contract number;
 4. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
 5. The form of relief requested.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-904. Time for Filing Protests

- A.** Protests concerning improprieties in a solicitation
 1. Protests based upon alleged improprieties in a solicitation that are apparent before the bid opening shall be filed before bid opening. Protests based upon alleged improprieties in a solicitation that are apparent before the closing date for receipt of initial proposals shall be filed before the closing date for receipt of initial proposals.
 2. In procurements requesting proposals, protests concerning improprieties that do not exist in the initial solicitation but that are subsequently incorporated into the solicitation shall be filed by the next closing date for receipt of proposals following the incorporation.
- B.** In cases other than those covered in subsection (A) of this rule, protests shall be filed within ten days after the protester knows or should have known the basis of the protest, whichever is earlier.
- C.** The protester shall give notice of the protest to the State Procurement Administrator within a reasonable time.
- D.** If the protester shows good cause, the procurement officer of the contracting agency may consider any protest that is not filed timely.
- E.** The procurement officer shall immediately give notice of the protest to all interested parties.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-905. Stay of Procurements During the Protest

If a protest is filed before the award of a contract or before performance of a contract has begun, the award may be made or contract performance may proceed, unless the State Procurement Administrator stays the contract award or performance on determining in writing that there is a reasonable probability that the protest will be sustained or that stay is not contrary to the best interests of the state.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-906. Confidential Information

- A.** Material submitted by a protester shall not be withheld from any interested party except to the extent that the withholding of information is permitted or required by law as determined pursuant to A.R.S. § 41-2533(D) or 41-2534(D) and R2-7-104.
- B.** If the protester believes the protest contains material that should be withheld, a statement advising the procurement officer of this fact shall accompany the protest submission in accordance with R2-7-104.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-907. Decision by the Procurement Officer

- A.** The procurement officer of the purchasing agency shall issue a written decision within 14 days after a protest has been filed pursuant to R2-7-903. The decision shall contain an explanation of the basis of the decision and a statement that the decision may be appealed to the Director of the Department of Administration within five days from receipt of the decision.
- B.** The procurement officer shall furnish a copy of the decision to the protester, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.
- C.** The time limit for decisions set forth in subsection (A) of this rule may be extended by the Director for good cause for a reasonable time not to exceed 30 days. The Director shall notify the protester in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.
- D.** If the procurement officer fails to issue a decision within the time limits set forth in subsection (A) or (C) of this rule, the protester may proceed as if the procurement officer had issued an adverse decision.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-908. Remedies

- A.** If the procurement officer of the purchasing agency sustains the protest in whole or part and determines that a solicitation, proposed contract award, or contract award does not comply with the procurement statutes and regulations, the officer shall implement an appropriate remedy.
- B.** In determining an appropriate remedy, the procurement officer shall consider all the circumstances surrounding the procurement or proposed procurement including, but not limited to, the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent of performance, costs to the government, the urgency of the procurement, and the impact of the relief on the purchasing agency's mission.
- C.** An appropriate remedy may include one or more of the following:
 1. Decline to exercise an option to renew under the contract;
 2. Terminate the contract;
 3. Amend the solicitation;
 4. Issue a new solicitation;
 5. Award a contract consistent with procurement statutes and regulations; or

6. Such other relief as is determined necessary to ensure compliance with procurement statutes and regulations.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-909. Appeals to the Director

- A. An appeal from a decision entered or deemed to be entered by the procurement officer shall be filed with the Director within five days after the date the decision is received. The appellant shall also file a copy of the appeal with the procurement officer.
- B. Content of appeal. The appeal shall contain:
 1. The information set forth in R2-7-903(B), including the identification of protected information in the manner set forth in R2-7-906;
 2. A copy of the decision of the procurement officer; and
 3. The precise factual or legal error in the decision of the procurement officer from which an appeal is taken.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-910. Notice of Appeal

- A. The procurement officer shall immediately give notice of the appeal to interested parties.
- B. The Director shall upon request furnish copies of the appeal to those named in subsection (A) of this rule subject to the provisions of R2-7-906.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-911. Stay of Procurement During Appeal

If a stay was issued pursuant to R2-7-905, the filing of an appeal shall automatically continue the stay unless the Director makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the state.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-912. Agency Report

- A. The procurement officer shall file a complete report on the appeal with the Director within ten days after the date the appeal is filed. At the same time, the procurement officer shall furnish a copy of the report to the appellant by certified mail, return receipt requested, and to any interested parties who have responded to the notice given pursuant to R2-7-910(B). The report shall contain copies of:
 1. The appeal;
 2. The bid or proposal submitted by the appellant;
 3. The bid or proposal of the firm that is being considered for award;

4. The solicitation, including the specifications or portions relevant to the appeal;
5. The abstract of bids or proposals or relevant portions;
6. Any other documents that are relevant to the protest; and
7. A statement by the procurement officer setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.

B. Extension for filing of report

1. The procurement officer may request in writing an extension of the time period setting forth the reason for extension.
2. The Director's determination on the request shall be in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for the submission of the report. The Director shall notify the procurement officer and the appellant in writing that the time for the submission of the report has been extended and the date by which the report will be submitted.

C. Comments on report

1. The appellant shall file comments on the agency report with the Director within seven days after receipt of the report. Copies of the comments shall be provided by the appellant to the procurement officer of the purchasing agency and other interested parties.
2. The Director may grant an extension on the time period to file comments pursuant to a written request made by the appellant within the period set forth in paragraph (C)(1) of this rule stating the reason an extension is necessary. The Director's determination on the request shall be in writing, state the reasons for the determination, and, if the extension is granted, set forth a new date for the filing of comments. The Director shall notify the procurement officer of any extension.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-913. Dismissal Before Hearing

The Director shall dismiss, upon a written determination, an appeal before scheduling a hearing if:

1. The appeal does not state a valid basis for protest; or
2. The appeal is untimely pursuant to R2-7-909(A).

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-914. Hearing

Hearings on appeals of bid protest decisions shall be conducted as contested cases pursuant to these rules and the Arizona Administrative Procedure Act (Article 1, Chapter 6, Title 41, Arizona Revised Statutes).

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-915. Remedies

If the Director sustains the appeal in whole or part and determines that a solicitation, proposed award, or award does not comply with

procurement statutes and regulations, remedies shall be implemented pursuant to R2-7-908.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-916. Contract Claims

- A. Claims under contracts shall be filed with the procurement officer administering the contract within 12 months after claim arises.
- B. The procurement officer administering the contract shall have the authority to settle and resolve contract claims subject to subsection (C) of this rule. Appeals from decisions of the procurement officer may be made to the Director pursuant to R2-7-919.
- C. The settlement or resolution of a claim in excess of \$10,000 requires the prior written approval of the State Procurement Administrator.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-917. Procurement Officer's Decision

- A. If a claim cannot be resolved by mutual agreement, the procurement officer shall, upon a written request by the contractor for a final decision, issue a written decision no more than 60 days after the request is filed. Before issuing a final decision, the procurement officer shall review the facts pertinent to the claim and secure any necessary assistance from legal, fiscal, and other advisors.
- B. Final decision. The procurement officer shall furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The decision shall include:
 1. A description of the claim;
 2. A reference to the pertinent contract provision;
 3. A statement of the factual areas of agreement or disagreement;
 4. A statement of the procurement officer's decision, with supporting rationale;
 5. A paragraph substantially as follows:
 "This is the final decision of the procurement officer. This decision may be appealed to the Director of the Department of Administration. If you appeal, you must file a written notice of appeal with the Director within five days from the date you receive this decision".

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-918. Issuance of a Timely Decision

- A. The time limit for decisions set forth in R2-7-917(A) may be extended for good cause for a reasonable time not to exceed 30 days. The procurement officer shall notify the contractor in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.

- B. If the procurement officer fails to issue a decision within 60 days after the request is filed or within the time prescribed under subsection (A) of this rule, the contractor may proceed as if the procurement officer had issued an adverse decision.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-919. Appeals and Reports to the Director

- A. An appeal from a final decision of a procurement officer on a claim shall be filed with the Director within five days from the date the decision is received. The appellant shall also file a copy of the appeal with the procurement officer.
- B. Content of appeal. The appeal shall contain a copy of the decision of the procurement officer and the precise factual or legal error in the decision of the procurement officer from which an appeal is taken.
- C. The procurement officer shall file a complete report on the appeal with the Director within ten days from the date the appeal is filed. At the same time, the procurement officer shall furnish a copy of the report to the appellant by certified mail, return receipt requested. The report at a minimum shall contain a copy of the claim, a copy of the procurement officer's decision, if applicable, and any other documents that are relevant to the claim.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-920. Controversies Involving State Claims Against a Contractor

All claims asserted by the state against a contractor that are not resolved by mutual agreement shall promptly be referred by the procurement officer to the Director for a hearing without regard to the procedures set forth in these rules R2-7-916 through R2-7-919.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-921. Hearing

Hearings on appeals of claims decisions shall be conducted as contested cases pursuant to these rules and the Arizona Administrative Procedure Act (Article 1, Chapter 6, Title 41, Arizona Revised Statutes).

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-922. Authority to Debar or Suspend

The Director has the sole authority to debar or suspend a person from participating in state procurements.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

tive April 3, 1985 (Supp. 85-2).

R2-7-923. Initiation of Debarment

Upon receipt of information concerning a possible cause for debarment, the Director shall investigate the possible cause. If the Director has a reasonable basis to believe that a cause for debarment exists, the Director may propose debarment under R2-7-925.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-924. Period of Debarment

- A. The period of time for a debarment shall not exceed three years from the date of the debarment determination.
- B. If debarment is based solely upon debarment by another governmental agency, the period of debarment may run concurrently with the period established by that other debarring agency.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-925. Notice

If the Director proposes debarment, the Director shall notify the person and affected affiliates in writing within seven days by certified mail, return receipt requested, of the proposed debarment and that a hearing shall be scheduled in accordance with this Article.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-926. Notice to Affiliates

- A. If the Director proposes to debar an affiliate, the affiliate shall have a right to appear in any hearing on the proposed debarment to show mitigating circumstances.
- B. The affiliate shall in writing advise the Director within 30 days of receipt of the notice under R2-7-925 of its intention to appear under subsection (A) of this rule. Failure to provide written notice of appearance within the 30-day period shall be a waiver of the right to appear in the hearing.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-927. Imputed Knowledge

- A. Improper conduct may be imputed to an affiliate for purposes of debarment where the impropriety occurred in connection with the affiliate's duties for or on behalf of, or with the knowledge, approval, or acquiescence of, the contractor.
- B. The improper conduct of a person or its affiliate having a contract with a contractor may be imputed to the contractor for purposes of debarment where the impropriety occurred in connection with the person's duties for or on behalf of, or with the knowledge, approval, or acquiescence of, the contractor.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

tive April 3, 1985 (Supp. 85-2).

R2-7-928. Reinstatement

- A. The Director may at any time after a final decision on a debarment reinstate a debarred person or rescind the debarment upon a determination that the cause upon which the debarment is based no longer exists.
- B. Any debarred person may request reinstatement by submitting a petition to the Director supported by documentary evidence showing that the cause for debarment no longer exists or has been substantially mitigated.
- C. The Director may require a hearing on the request for reinstatement.
- D. The decision on reinstatement shall be in writing, be made within seven days after the request for a hearing is filed and specify the factors on which it is based.
- E. Decisions on reinstatement requests are not subject to judicial appeal.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-929. Limited Participation

The Director may allow a debarred person to participate in state contracts on a limited basis during the debarment period upon a written determination that participation is advantageous to the state. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-930. Suspension

- A. If adequate grounds for debarment exist, the Director may suspend a person from receiving any award in accordance with the procedures in R2-7-932.
- B. The Director shall not suspend a person pending debarment unless compelling reasons require suspension to protect state interests.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-931. Period and Scope of Suspension

- A. Unless otherwise agreed to by the parties, the period of suspension shall not be more than 30 days without satisfying the notice requirements of R2-7-932.
- B. For purpose of suspension, a person's conduct may be imputed to an affiliate or another person in accordance with R2-7-927.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-932. Notice, Hearing, Determination, and Appeal

- A. The Director shall notify the person suspended by personal service or certified mail, return receipt requested.
- B. The notice of suspension shall state:
 1. The basis for suspension;
 2. The period, including dates, of the suspension;

3. That bids or proposals shall not be solicited or accepted from the person and, if received, will not be considered; and
 4. That the person is entitled to a hearing on the suspension if the person files a written request for a hearing with the Director within seven days after receipt of the notice.
- C.** If a suspended party requests a hearing, the hearing officer shall arrange for a prompt hearing unless the Attorney General determines that a hearing at such time is likely to jeopardize an investigation. In no case shall the hearing be delayed longer than six months after notice of suspension.
- D.** A hearing requested under this Section shall be conducted, to the extent practicable, in accordance with these rules and the Arizona Administrative Procedure Act (Article 1, Chapter 6, Title 41, Arizona Revised Statutes).

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-933. Master List

- A.** The Director shall maintain a master list of debarments, suspension, and voluntary exclusions under this Article.
- B.** The master list shall show as a minimum the following information:
1. The names and vendor number of those persons whom the state has debarred or suspended under this Article;
 2. The basis of authority for the action;
 3. The period of debarment or suspension, including the expiration date; and
 4. The name of the debarring or suspending agency, if the state's debarment or suspension is based on debarment or suspension by another governmental agency.
- C.** The master list shall include a separate action listing persons voluntarily excluded from participation in state contracts.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-934. Hearing Procedures

- A.** If a hearing is required or permitted under these rules, the Director shall act as a hearing officer or appoint a hearing officer. The Director may also direct the parties to engage in settlement negotiations or alternative disputes resolution procedures before scheduling a hearing.
- B.** If a hearing is required or permitted under these rules, the hearing officer shall arrange for a prompt hearing and notify the parties in writing of the time and place of the hearing.
- C.** The hearing shall be conducted in an informal manner without formal rules of evidence or procedure.
- D.** The hearing officer may:
1. Hold pre-hearing conferences to settle, simplify, or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;
 2. Require parties to state their positions concerning the various issues in the proceeding;
 3. Require parties to produce for examination those relevant witnesses and documents under their control;
 4. Rule on motions and other procedural items on matters pending before such officer;
 5. Regulate the course of the hearing and conduct of participants;

6. Establish time limits for submission of motions or memoranda;
 7. Impose appropriate sanctions against any person failing to obey an order under these procedures, which may include:
 - a. Refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence;
 - b. Excluding all testimony of an unresponsive or evasive witness; and
 - c. Expelling person from further participation in the hearing;
 8. Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of judicial notice; and
 9. Administer oaths or affirmations; and
 10. Issue a stay of contract award or contract performance.
- E.** A transcribed record of the hearing shall be made available at cost to the requesting party.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-935. Recommendation by the Hearing Officer

- A.** The hearing officer shall make a recommendation to the Director based on the evidence presented. The recommendation shall include findings of fact and conclusions of law.
- B.** The Director may affirm, modify, or reject the hearing officer's recommendation in whole or in part, may remand the matter to the hearing officer with instructions, or make any other appropriate disposition.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-936. Final Decision by the Director

A decision by the Director shall be final. The decision shall be sent within 20 days after the conclusion of the hearing to all parties by personal service or certified mail, return receipt requested. The decision shall state that any party adversely affected may within ten days request a rehearing with the Director.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-937. Rehearing of Director's Decision

- A.** Any party, including a procurement officer, who is aggrieved by the Director's decision may file a written request for rehearing of the decision specifying the particular grounds.
1. The request for rehearing shall be filed with the Director within ten days after receipt of the decision and shall include any supporting affidavits.
 2. The request shall be clearly designated as a "Request for Rehearing".
 3. The Director shall within five days after the request is filed notify interested parties of the request by personal service or certified mail, return receipt requested.

- B. An interested party may within ten days after receipt of the notice file a response including opposing affidavits.
- C. Any argument not raised in the request or in a response is waived.
- D. The Director may require the filing of written briefs and may provide for oral argument.
- E. A rehearing of the decision may be granted for any of the following causes:
 1. Irregularity in the proceedings before the Director or an abuse of discretion by the Director, depriving the requesting party of a fair hearing;
 2. Misconduct of the Director, his staff or the hearing officer or any party;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or rejection of evidence or other error of law occurring at the hearing;
 7. A showing that the decision is not justified by the evidence or is contrary to law.
- F. The Director's decision concerning a request for rehearing shall be in writing and shall state the basis of the decision. A decision granting a rehearing shall specify with particularity the grounds on which the rehearing is granted, and the date, time and place of the rehearing. The rehearing shall cover only those matters specified in the decision.
- G. The Director, within the time for filing a request for rehearing under this rule, may on his own initiative order a rehearing of his decision for any reason for which he might have granted a rehearing on request of a party.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

ARTICLE 10. INTERGOVERNMENTAL PROCUREMENT**R2-7-1001. Definition**

"Eligible procurement unit" means a public procurement unit or a nonprofit educational or public health institution.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-1002. Applicability

Agreements entered into pursuant to Article 10 of the Arizona Procurement Code shall be limited to the areas of procurement, warehousing or materials management.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2).

R2-7-1003. Intergovernmental Procurement Agreements Approval

All agreements entered into pursuant to Article 10 of the Arizona Procurement Code by the state shall be approved by the State Procurement Administrator.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-1004. Cooperative State Purchasing Agreement in Form of a State Requirements Contract

Any state requirements contract with an eligible procurement unit entered into pursuant to A.R.S. § 41-2642 shall provide that:

1. Payment for materials or services and inspection and acceptance of materials or services ordered by the eligible procurement unit under Department contracts shall be the exclusive obligation of such unit;
2. The exercise of any rights or remedies by the eligible procurement unit shall be the exclusive obligation of such unit;
3. The Department may terminate without notice any cooperative purchasing agreement if the eligible procurement unit fails to comply with the terms of the contract;
4. Failure of an eligible procurement unit to secure performance from the contractor in accordance with the terms and conditions of its purchase order does not necessarily require the state to exercise its own rights or remedies;
5. The eligible procurement unit shall not use a state contract as a method for obtaining addition concessions or reduced prices for similar material or services; and
6. The Department shall provide the eligible procurement unit a list monthly of material and services available from state contracts. An annual fee established by the State Procurement Office and approved by the Director for a copy of such list, plus a fee established by the State Procurement Office for each additional copy, shall be paid by the eligible procurement unit to the Department.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-1005. Informational and Technical Services

The State Procurement Administrator shall develop, maintain and distribute a list of information and technical services available from the State Procurement Office. Such list shall contain the names of any suspended or debarred contractors and shall be distributed to all eligible procurement units that have entered into a cooperative purchasing agreement with the Department.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2).

R2-7-1006. Establishment of the Committee

- A. The Director shall appoint a Committee to determine under A.R.S. § 41-2636 whether materials or services offered by Arizona Industries for the Blind ("AIB") and Arizona Correctional Industries ("ACI") should be placed on an Arizona state contract for mandatory purchase by state governmental units. The state procurement Administrator or his or her designee shall serve as chairman. Committee members shall serve at the pleasure of the Director.

- B.** The chairman may appoint a subcommittee to assist in the evaluation of materials and services under consideration by the committee.

Historical Note

Former Section R2-7-1006 adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired.

Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Section repealed, new Section R2-7-1006 renumbered from R2-7-1007 and amended effective April 2, 1993 (Supp. 93-2).

R2-7-1007. Evaluation of Materials and Services

- A.** For each material or service under consideration by the Committee, AIB or ACI shall submit to the Committee, where appropriate, specifications, production data, and pricing data relating to each material or service for which an Arizona state contract is sought.
- B.** The Committee shall evaluate each material or service to determine the following:
1. The existence and extent of a need within state governmental units for the material or service;
 2. The availability of the material or service from AIB or ACI to meet those needs;
 3. That AIB or ACI is generally capable of meeting the reasonable delivery requirements of state governmental units;
 4. That the quality of the material or service is substantially equivalent to that available from the private sector; and
 5. A reasonable price for the material or service or, if AIB or ACI has established a price, that it is equivalent to the price for a substantially similar material or service available from the private sector.

Historical Note

Former Section R2-7-1007 adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired.

Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Section renumbered to R2-7-1006, new Section R2-7-1007 adopted effective April 2, 1993 (Supp. 93-2).

R2-7-1008. Contract Awards by the Committee

- A.** If a majority of the Committee votes that the criteria set forth in R2-7-1007(B) have been met, the State Procurement Office shall enter into an Arizona state contract with AIB or ACI for the material or service.
- B.** If a majority of the Committee votes that at least the criterion set forth in R2-7-1007(B)(4) has been met, the Committee may direct the State Procurement Office to enter into a contract with AIB or ACI for the material or service from which

state governmental units may, but are not required to, purchase.

- C.** Contracts awarded under this rule shall be for one year with up to three one-year options to renew. If the State Procurement Office, when considering the exercise of an option to renew, makes an initial determination that the criteria set forth in R2-7-1007(B) no longer are being met, the State Procurement Office shall refer the matter to the Committee for a final determination.
- D.** If a majority of the Committee determines that the criteria set forth in R2-7-1007(B) no longer are being met respecting a material or service covered under a contract awarded under this rule, the Committee shall withdraw its approval of such material or service and notify the State Procurement Office and the AIB or ACI, as appropriate. The State Procurement Office, upon receipt of such notice, shall discontinue procurement of the disapproved material or service until such time as the Committee again may approve the material or service.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Former Section R2-7-1008 renumbered to R2-7-1009, new Section R2-7-1008 adopted effective April 2, 1993 (Supp. 93-2).

R2-7-1009. Procurement of Other AIB or ACI Materials or Services by State Governmental Units

A state governmental unit may enter into an agreement pursuant to R2-7-1004 to purchase without competitive bidding a material or service that AIB or ACI has not submitted to the Committee or that has been rejected by the Committee provided delivery and quality of the material or service meet the state governmental unit's reasonable requirements.

Historical Note

Emergency rule adopted effective July 17, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired. Emergency rule re-adopted without change effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency expired, text rescinded. Former Section R2-7-1009 renumbered to R2-7-1010, new Section R2-7-1009 renumbered from R2-7-1008 and amended effective April 2, 1993 (Supp. 93-2).

R2-7-1010. Renumbered

Historical Note

Former Section R2-7-1009 renumbered to R2-7-1010 effective April 2, 1993 (Supp. 93-2).